

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A
PERSON IN FEDERAL CUSTODY

United States District Court	District <u>Eastern Tennessee</u>
Name (under which you were convicted): <u>Joel David Cormier</u>	Docket or Case No.: <u>2:15-cr-03</u>
Place of Confinement: <u>Petersburg FCI</u>	Prisoner No.: <u>48108-074</u>
UNITED STATES OF AMERICA	
Movant (include name under which convicted)	
v. <u>Joel David Cormier</u>	

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: 6th Circuit
Court of the Eastern District of Tennessee, Sitting at Greenville, TN.

(b) Criminal docket or case number: _____
2. (a) Date of the judgment of conviction: 22 June, 2015
(b) Date of sentencing: 19 October, 2015
3. Identify all counts and crimes for which you were convicted and sentenced in this case: Using a means or
facility of interstate commerce to persuade, induce, entice or coerce a
person under the age of eighteen to engage in illegal sexual activity
pursuant to 18 U.S.C. §2422(b)

4. Length of sentence for each count or crime for which you were convicted in this case: 216 months

5. (a) What was your plea?
Not guilty ☐
Guilty ☒
Nolo contendere (no contest) ☐
(b) If you entered a guilty plea to one count or charge, and a not guilty plea to another count or charge, give details:

N/A

6. If you went to trial, what kind of trial did you have? (Check one)

(a) Jury ☐

(b) Judge only ☐

N/A

7. Did you testify at the trial? Yes ☐ No ☐ N/A

8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

(a) Date you filed: _____

N/A

(b) Name of court: _____

N/A

(c) Docket or case number: _____

N/A

(d) Result: _____

N/A

(e) Date of result: _____

N/A

(f) Grounds raised: _____

N/A

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐ N/A

If "Yes," answer the following:

(1) Date you filed: _____

N/A

(2) Docket or case number: _____

N/A

(3) Result: _____

N/A

(4) Date of result: _____

N/A

(5) Grounds raised: _____

N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court? NO

11. If your answer to Question 10 was "Yes," give the following information: Yes ☐ No ☒

- (a) (1) Date you filed: N/A
(2) Name of court: N/A
(3) Docket or case number (if you know): N/A
(4) Date of filing (if you know): N/A
(5) Nature of the proceeding: N/A
(6) Grounds raised: N/A

(7) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ N/A

(8) Result: N/A

(9) Date of result: N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Date you filed: N/A

(2) Name of court: N/A

(3) Docket or case number (if you know): N/A

(4) Date of filing (if you know): N/A

(5) Nature of the proceeding: N/A

(6) Grounds raised: N/A

(7) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ N/A

(8) Result: N/A

(9) Date of result : N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐ N/A

(2) Second petition: Yes ☐ No ☐ N/A

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Prosecutorial Misconduct.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): Assistant United States Attorney Kerney - Quilled admitted into evidence items which were not disclosed in discovery. Upon questioning by the court, she stated that items were indeed included in discovery. Items had a direct impact upon proceedings at sentencing. Violation of Brady rule and Perjury!

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☐ N/A

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition or application? Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Date motion was filed: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number: N/A

Result (attach a copy of the court's opinion and order, if available): N/A

Date of result: N/A

(3) Did you receive a hearing on your motion? Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition or application? Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☐ N/A

If yes, answer the following:

Date you filed: N/A

Name of court where the appeal was filed: N/A

Docket or case number: N/A

Result (attach a copy of the court's opinion and order, if available): N/A

Date of result: N/A

GROUND TWO: Judicial Misconduct

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): Presiding Judge at Sentencing, the Honourable J. Ronnie Greer, allowed submission of items not listed or disclosed in discovery, perpetuating the Brody rule violation.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☐ N/A

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition or application? Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Date motion was filed: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number: N/A

Result (attach a copy of the court's opinion and order, if available): N/A

Date of result: N/A

(3) Did you receive a hearing on your motion? Yes ☐ No ☒ N/A

(4) Did you appeal from the denial of your motion, petition or application? Yes ☐ No ☒ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☒ N/A

If yes, answer the following:

Date you filed: N/A

Name of court where the appeal was filed: N/A

Docket or case number: N/A

Result (attach a copy of the court's opinion and order, if available): N/A

Date of result: _____

GROUND THREE: Ineffective Assistance of Council.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): Defense Attorney of record, Rosana Brown Failed to strenuously object

to admission into evidence at sentencing of items/documents not included in discovery, if for no other reason than posterity for the record; Defense's second-chair Attorney, Nikki Pierce is the cousin of Kenni Carter, Greene County Sheriff's Detective who "investigated" the state case against me; conflict of interest.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☒ N/A

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition or application? Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Date motion was filed: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number: N/A

Result (attach a copy of the court's opinion and order, if available): N/A

Date of result: N/A

(3) Did you receive a hearing on your motion? Yes ☐ No ☒ N/A

(4) Did you appeal from the denial of your motion, petition or application? Yes ☐ No ☒ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☒ N/A

If yes, answer the following:

Date you filed: N/A

Name of court where the appeal was filed: N/A

Docket or case number: N/A

Result (attach a copy of the court's opinion and order, if available): N/A

Date of result: N/A

GROUND FOUR: Excessive Length OF Sentence, lack of mitigation.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): In the State case(s) with which I was charged with similar crimes as my Federal conviction, the sentence(s) was/were much shorter, given my lack of criminal history. In the most severe, I would have received a maximum sentence of 8 years (approximately) with the potential of parole after having served a percentage (30%) of my sentence.

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☒ N/A

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition or application? Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Date motion was filed: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number: N/A

Result (attach a copy of the court's opinion and order, if available): N/A

Date of result: N/A

(3) Did you receive a hearing on your motion? Yes ☐ No ☒ *N/A*

(4) Did you appeal from the denial of your motion, petition or application? Yes ☐ No ☒ *N/A*

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☒ *N/A*

If yes, answer the following:

Date you filed: *N/A*

Name of court where the appeal was filed: *N/A*

Docket or case number: *N/A*

Result (attach a copy of the court's opinion and order, if available):

Date of result: *N/A*

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, state which ground or grounds have not been presented and your reasons for not presenting them:

None of the aforementioned grounds have been presented in any court as this is my first filing.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the date of filing, the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: *Federal Defender's Services; Rosana Brown; Greenville, TN.*

(b) At arraignment and plea: SAA

(c) At trial: N/A

(d) At sentencing: SAA

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?
Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒ N/A

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

N/A

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

I declare under penalty of perjury that the foregoing is true and correct and that this Motion Under § 2255 was placed in the prison mailing system on 06 September 2016 (month, date, year).

05 September 2016
Date

If the person signing is not movant or an attorney, state relationship to movant and explain why movant is not signing this petition.